



DAVID E. JANSSEN
Chief Administrative Officer

County of Los Angeles
CHIEF ADMINISTRATIVE OFFICE
713 KENNETH HAHN HALL OF ADMINISTRATION • LOS ANGELES, CALIFORNIA 90012
(213) 974-1101

HANNUD

July 10, 2001

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

**TERMINATION AND AWARD OF CONCESSION AGREEMENT FOR THE OPERATION
OF THE KENNETH HAHN HALL OF ADMINISTRATION CAFETERIA
(FIRST) (4 VOTES)**

IT IS RECOMMENDED THAT YOUR BOARD:

1. Rescind County Contract No. 73084 with Helen Chong; doing business as Cafés Around Town (CAT), for the operation of the Kenneth Hahn Hall of Administration cafeteria, and authorize the Chief Administrative Office to undertake all necessary actions to carry out the rescission and the County's responsibilities relating thereto.
2. Approve and instruct the Mayor to sign the attached concession agreement with P&A Food Systems, Inc. (P&A)
3. Instruct the Auditor-Controller to deposit the monthly rents to the General Fund.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The purpose of the recommended action is to rescind the existing contract with CAT, the current concessionaire, and award a five-year contract to P&A, for the operation of the Kenneth Hahn Hall of Administration cafeteria.

- On October 24, 2000, your Board approved a seven-year contract with CAT and authorized the refurbishment of the cafeteria. The remodel was completed in April 2001, and the facility reopened under CAT management on April 16, 2001.



- There were operational problems observed almost immediately, which we attributed to start-up difficulties that would be corrected within a reasonable time. However, despite repeated requests to the concessionaire to implement remedial action, no noticeable progress was made.

This lack of action led to a formal notice, delivered to the concessionaire on June 6, 2001, to cure operational and contract compliance issues within 30 days. At this time, although some of the items were addressed, we find that, overall, the concessionaire has continued to operate in a substandard manner as evidenced by the "B" rating given by the Health Department; similarly, important contract compliance issues were not satisfied.

CAT's financial capacity to perform is in question, based on its failure to provide the County with the required \$5,000 security deposit, constituting a default under the existing contract, and the inability to meet the payment of its prorated share of the cafeteria's capital improvement, without taking on new financial partners/investors, which was done in a manner that constitutes a violation of the seven-year contract.

- With the assistance of our food service consultant, Perspectives Inc., this office re-interviewed the three other top respondents to the original Request For Proposal issued for the operation of the cafeteria. We believe that P&A has the experience with cafeterias serving an employee population comparable to our Civic Center complex and resources necessary to assume the operation of the facility without any significant disruption of service. P&A's accounts include The Department of Water and Power (Sun Valley), Parker Hannifin (Irvine), Allergan (Irvine), Orange County Register, Verizon, Fluor-Daniels and others.

P&A was selected because of its management philosophy which stresses service to its customers. They have committed to providing our cafeteria quality, variety and value in the food selections offered, to improve way-finding and congestion in the food service area, and to provide a menu of each week's selections that can be accessed over the internet. In addition, P&A has a strong interest in providing catering services for us, as needed. Our consultant, Perspectives, Inc., visited the Verizon cafeteria in Orange County and they confirm that the food service was superior and there was a high degree of employee use of the facility.

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Implementation of Strategic Plan Goals

The Countywide Strategic Plan directs that we invest in public infrastructure in order to strengthen the County's fiscal capacity. The granting of concession agreements for the operation of County facilities to provide food services to County employees and the public supports this strategy by complying with the Strategic Asset Management Principles (Goal 4, Strategy 2, Objective 2).

FISCAL IMPACT/FINANCING

Pursuant to its lease, CAT was responsible for advancing approximately \$165,000 of the \$800,000 required for the cafeteria refurbishment. It was anticipated that the County would reimburse CAT for this initial expenditure from its share of cafeteria revenues. County Counsel has advised that, with the termination of the agreement with CAT, the County may still be responsible for this reimbursement.

The new lease with P&A, in addition to providing for an upgraded cafeteria service for County employees in, and visitors to, the Hall of Administration, requires P&A to pay rent to the County in an amount equal to 50 percent of net profits, a formula that is consistent with other large governmental agencies and corporate accounts. This rent is projected to be less than \$5,000 annually. The County will incur expenses for utilities and maintenance of the structure. However, P&A is responsible for maintenance of the equipment.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Under the terms of the attached five-year concession agreement, P&A will contribute up to \$22,000 to improve some of the operational aspects of the cafeteria. This will consist primarily of improved signage to promote better customer flow, and an art program to be developed in coordination with our office.

- The granting of concession agreements for the operation of food service facilities at County facilities is authorized by the provisions of Government Code 25536, and is categorically exempt under CEQA and the revised Environmental Document Reporting Procedures and guidelines adopted by your Board.

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IMPACT ON CURRENT SERVICES (OR PROJECTS)

It is anticipated that P&A will be able to mobilize and be fully operational within three to four days from the date of approval of the concession agreement.

CONCLUSION

Please instruct the Executive Officer, Board of Supervisors to provide a copy of the executed Agreement and a stamped, adopted Board letter to the Chief Administrative Officer, Auditor-Controller, Assessor and County Counsel.

Respectfully submitted,



DAVID E. JANSSEN
Chief Administrative Officer

DEJ:SNY
CB:kb

Attachments (2)

c: County Counsel
Auditor-Controller

CONCESSION AGREEMENT
BETWEEN
COUNTY OF LOS ANGELES
AND
P & A FOOD SYSTEMS, INC.

THIS CONCESSION AGREEMENT, made and entered into this _____ day
of _____, 2001.

BY AND BETWEEN

COUNTY OF LOS ANGELES, a body corporate
and politic, hereinafter referred to as "County",

AND

P & A FOOD SYSTEMS, INC., hereinafter
referred to as "Concessionaire",

WITNESSETH:

WHEREAS, the County owns the lands and improvements located at 500 West Temple Street, Los Angeles, California 90012; hereinafter referred to as the Kenneth Hahn Hall of Administration.

WHEREAS, The Board of Supervisors is authorized by the provisions of Government Code 25536 to grant concessions therein that are consistent with the government purposes served thereby; and

WHEREAS, a concession for the sale of food and beverage is consistent with said purposes;

WHEREAS, Concessionaire is willing to exercise the grant of such a concession in accordance with the terms and conditions prescribed therefor;

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions set forth herein, the parties and each of them do agree as follows:

1. CONCESSION GRANTED

Concessionaire is hereby authorized to sell food and beverages within the confines of the food service facilities mentioned above.

2. CONCESSION PREMISES

2.01 The concession premises shown in Exhibits "A" shall be used only and exclusively for concession purposes, and such other purposes as are related thereto provided express approval therefor is granted by the Chief Administrative Officer and for no other purposes whatsoever.

2.02 Concessionaire acknowledges personal inspection of the concession premises and the surrounding area and evaluation of the extent to which the physical condition thereof will affect the concession. Concessionaire accepts the concession premises in its present condition and may refurbish same in accordance with plans and specifications to be approved by the Chief Administrative Office.

2.03 Concessionaire may make or construct or cause to be made or constructed additions, alterations, repairs or changes in the concession premises at Concessionaire's expense, provided written approval thereof is first obtained from the Chief Administrative Officer, and permits are obtained therefor as hereafter required, and there is compliance with such terms and conditions relating thereto as may be imposed thereon by the County.

2.04 Concessionaire hereby acknowledges the title of County or any other public agencies having jurisdiction thereover, in and to the concession premises and the improvements located thereon, and covenants and agrees never to assail, contest or resist said title.

3. TERM

3.01 The term of the concession shall be for a period of five years commencing upon execution of said concession agreement by the Board of Supervisors, and terminating five years thereafter, unless sooner terminated as herein provided.

3.02 In the event Concessionaire holds over beyond the term herein provided with the consent, express or implied of County, such holding shall be from month-to-month only, subject to the conditions of this agreement, shall not be a renewal hereof, and shall be at the monthly compensation provided herein.

3.03 Either party may cancel this concession agreement without cause by giving 120 days written notice to the other party. Upon cancellation, County shall reimburse Concessionaire for its capital improvement and equipment costs, except kitchen expendables such as, without limitation, pots, pans, and silverware. This reimbursement shall be subject to the provisions of Section 11.04 entitled "Ownership Upon Termination".

4. RENT

4.01 Concessionaire shall pay rent to the County a monthly amount equal to 50 percent (50%) of the net profit.

4.02 Rent shall commence 30 days after Concessionaire is in possession of concession premises. Payment shall be made by check or draft issued and payable to the Los Angeles County Auditor-Controller on or before the 5th day of the calendar month of the term provided herein. Payment shall be mailed or otherwise delivered to the Franchise/Concession Section, Auditor-Controller, County of Los Angeles, 500 West Temple St., Rm. 514, Los Angeles, California 90012, with a copy of such check to be mailed to Chief Administrative Office, Real Estate Division-Property Management Section, 222 South Hill Street, 3rd Floor, Los Angeles, California 90012.

4.03 In the event payment is not made on or before said date, a penalty of 10 percent (10%) shall be added to the unpaid amount.

4.04 The late payment charge may be waived whenever the Chief Administrative Officer, upon appeal of the Concessionaire, finds late payment excusable by reason of extenuating circumstances.

4.05 Any late payment charge shall be due and payable within the next rental payment period. County shall not be obligated at any time to notify Concessionaire of late payment charges or the accumulation thereof.

5. ACCOUNTING RECORDS

5.01 Concessionaire shall be required to maintain a method of accounting which shall, to the satisfaction of the Auditor-Controller, correctly and accurately reflect the gross receipts and disbursements of Concessionaire in connection with the concession. The method of accounting, including bank accounts established for the concession, shall be separate from the accounting system used for any other business operated by concessionaire or for recording Concessionaire's personal financial affairs. Such method shall include the keeping of the following documents:

- a. Regular books of accounting such as general ledgers.
- b. Journals, including any supporting and underlying documents such as vouchers, checks, tickets, bank statements, etc.
- c. State and Federal income tax returns and sales tax returns and checks and other documents providing payment of sum shown which shall be kept in confidence by the County.
- d. Cash register tapes (daily tapes may be separated) but shall be retained so that from day to day the sales can be identified.
- e. Any other accounting records that the Auditor-Controller deems necessary for proper reporting of receipts.

5.02 All sales shall be recorded by means of cash registers which publicly display the amount of each sale and automatically issue a customer's receipt or certify the amount recorded in a sales slip. Said cash registers shall, in all cases, have locked-in sales totals and transaction counters which are constantly accumulating and which cannot, in either case, be reset, and in addition thereto, a tape located within the register on which transaction number and sales details are imprinted. Beginning and ending cash registers readings shall be made a matter of daily record.

5.03 All documents, books and accounting records shall be open for inspection and reinspection at any reasonable time during the term of this agreement. In addition, the Auditor-Controller may from time to time conduct an audit and re-audit of the books and business conducted by Concessionaire and observe the operation of the business so that accuracy of the above records can be confirmed. If the report of gross sales made by Concessionaire to the Auditor-Controller should be found to be less than the amount of

gross sales disclosed by such audit and observation, Concessionaire shall pay the delinquent amount within 30 days of billing therefor. If the additional amount due exceeds 2 percent and there is no reasonable basis for the failure to report and pay thereon, Concessionaire shall also pay the cost of the audit and late charges heretofore provided for delinquent payments.

5.04 All information obtained in connection with the Auditor-Controller's inspection of records or audit shall be treated as confidential information and except from public disclosure thereof. County shall not be liable or responsible for the disclosure of any such records including those marked trade secret, confidential or proprietary, if such disclosure is deemed to be required by law or an order of Court.

5.05 Concessionaire shall furnish the Auditor-Controller with a monthly gross receipts report showing the amount payable therefrom to the County. Such report shall accompany each monthly payment required to be made as provided herein. A copy of the monthly sales report shall be mailed to Chief Administrative Office, Real Estate Division-Property Section, 222 South Hill Street, 3rd Floor, Los Angeles, California 90012, Attention: Property Management Section. In addition thereto, Concessionaire shall furnish the Auditor-Controller with an annual Profit-and-Loss statement and a balance sheet prepared by a person and a form acceptable to said officer. The annual financial statements shall be submitted within 60 days of the close of an agreement year. Said closing date shall be determined by reference to the date for commencement of the term herein provided.

5.06 All such accounting records, including, but not limited to, all financial records, journals, vouchers, checks, State and Federal income tax returns and sales tax returns, cash register tapes, proprietary data and information, shall be kept and maintained by Concessionaire and shall be made available to County during the term of this agreement and for a period of four years thereafter unless County's written permission is given to dispose of any such material prior to such time. All such material shall be maintained by Concessionaire at a location in Los Angeles County, provided that if any such material is located outside the Los Angeles County, then, at County's option, Concessionaire shall pay County for travel, per diem, and other costs incurred by County to examine, audit, excerpt, copy or transcribe such material at such other location.

6. OPERATING RESPONSIBILITIES

6.01 Compliance with Law

Concessionaire shall conform to and abide by all municipal and County ordinances, State and Federal laws and regulations, insofar as the same or any of them are applicable; and where permits or licenses are required for the concession or construction authorized herein, the same must be first obtained from the regulatory agency having jurisdiction there over.

6.02 Compliance with Rules and Regulations

Concessionaire shall conform to and abide by all rules and regulations of the Board of Supervisors and the Chief Administrative Officer insofar as the same or any of them are applicable.

6.03 Disorderly Persons

Concessionaire agrees not to allow any loud, boisterous or disorderly persons to loiter about the concession premises.

6.04 Illegal Activity

Concessionaire shall not permit any illegal activities to be conducted upon the concession premises.

6.05 Signs

Concessionaire shall not post signs or advertising matter upon the concession premises or improvements thereon, unless prior approval therefor is first obtained from the Chief Administrative Officer.

6.06 Noninterference

Concessionaire shall not interfere with the public use of the County buildings where the cafeterias are located.

6.07 Concession Staff

6.07.1 Concessionaire shall maintain an adequate and proper staff and shall make a reasonable effort to retain present employees. The Chief Administrative Officer may, at any time, give Concessionaire written notice to the fact that the conduct or actions of a designated employee of Concessionaire is, in the reasonable belief of the Chief Administrative Officer, detrimental to the interests of the public patronizing the concession premises. Concessionaire will meet with representatives of the Chief Administrative Officer to consider the appropriate course of action with respect to such matter and Concessionaire shall take reasonable measures under the circumstances to assure the Chief Administrative Officer that the conduct and activities of Concessionaire's employee will not be detrimental to the interest of the public patronizing the concession premises.

6.07.2 Concessionaire shall designate one member of the staff as the Concession Manager with whom County may deal on a daily basis. Any other persons selected by Concessionaire as Concession Manager shall be skilled in the management of business similar to the concessionaire and shall be subject to approval by the Chief Administrative Officer. The Concession manager shall be fully acquainted with the concession, familiar with the terms and conditions prescribed therefore by this agreement; and authorized to act in the day-to-day operation thereof.

6.07.3 Concessionaire warrants that it fully complies with all statutes, requirements and laws regarding the employment eligibility of aliens and other, and that its employees performing services hereunder meet the citizenship or alien status requirements contained in federal and state statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986 (P.L. 99-603). Concessionaire shall obtain from all covered employees eligibility status required by federal statutes and regulations as they currently exist and as they may be hereafter amended. Concessionaire shall retain such documentation for all covered employees for the period prescribed by law. Concessionaire shall indemnify, defend, and hold harmless the County, its officers and employees from employer sanctions and any other liability which may be assessed against Concessionaire or the County, or both in connection with any alleged violation of federal statutes or regulations pertaining to the eligibility for employment of persons performing services under this agreement.

6.07.4 All persons employed by Concessionaire under this agreement shall be competent, trustworthy and well qualified for their work. Concessionaire shall submit to the Chief Administrative Officer a roster of employees who are required to enter County facilities. The roster shall be kept current. Concessionaire and his/her employees will be required to provide picture identification for entry into the facility and to comply with all applicable regulations of the County.

6.07.5 Concessionaire shall file with the Chief Administrative Officer a certificate for each member of the concession staff showing that within the last two (2) years such person has been examined and has been found to be free of communicable tuberculosis. Certificate means a document signed by the examining physician and surgeon who is licensed under Chapter 5 (commencing with Section 2000), Division 2 of the State Business and Professions Code or a notice from a public health agency or unit of the Tuberculosis Association which indicated freedoms from active tuberculosis

6.08 Days and Hours of Operation

Concessionaire shall keep each concession open every day of the week, Monday through Friday, inclusive. The minimum hours of operation shall be from 7:00 a.m. to 3:00 p.m. each day the concession is required to be open. In addition, thereto, Concessionaire shall keep the concession open for service to employees at such other times as may be requested by the Chief Administrative Officer.

6.09. Menu And Price Schedules

Concessionaire's menu shall be that which Concessionaire has proposed and County has approved as shown on attached Exhibit "B". During the term of the concession, Concessionaire shall make no changes to the quantity, quality, or price of any item on the approved menu without first obtaining the prior written approval of the Chief Administrative Office.

6.10 Menu

Concessionaire's proposed menu and all subsequent menus shall include a description of each item, including the weight of each portion and the government grades for its component items. No menu shall misrepresent quality, grade, or weight of any item. If Concessionaire is unable to determine the weight of a given item, it may indicate that its weight will not be less than an amount which Concessionaire shall state. For a product which changes weight during cooking, Concessionaire shall indicate whether the weight indicated is that product's uncooked weight. If Concessionaire purchases various government grades of a given item, it shall state the lowest grade which it purchases.

6.11 Publicly Displayed Menu

Prices for each item sold in the facility shall be conspicuously displayed to the satisfaction of the Chief Administrative Officer as to information given, design, type, size, style, color, and all other specifics. Said prices shall not exceed the approved prices for said items. If, in addition to any publicly displayed menu, Concessionaire provides individual menus for customers, or places price markers on item displays, said prices shall not exceed the approved prices for said items.

6.12 Amendments May Be Required

The Chief Administrative Officer may re-evaluate the selection of items during the term. The Chief Administrative Officer's determination that the selection offered is inadequate, or that any price is excessive, or that the quality or quantity of any item is deficient, shall be conclusive. Concessionaire may meet and confer with the Chief Administrative Officer regarding such matters.

6.13 Quality of Foods and Beverages

All foods and beverages offered for sale by Concessionaire shall be of high quality, and comparable to first class food and beverage facilities of a similar type in the metropolitan Los Angeles area.

6.14 Removal of Objectionable Goods and Services

Concessionaire shall immediately remove or withdraw from sale any goods or services which may be found objectionable to employees and public welfare by the Chief Administrative Officer following receipt of written notification therefor.

6.15 Sanitation

6.15.1 No offensive matter or refuse or substance containing an unnecessary, unreasonable or unlawful fire hazard or material detrimental to the public health, shall be permitted or remain on the concession premises, and Concessionaire shall prevent any accumulation thereof from occurring. Concessionaire shall, at all times keep the kitchen, dish room, serving line, equipment and materials located thereon sanitary and free from

rubbish, refuse, food scraps, garbage, dust, dirt, flies and other insects, rodents and vermin. All apparatus, appliances, utensils, devices, equipment and piping used by Concessionaire shall be constructed so as to facilitate the cleaning and inspection thereof and shall be thoroughly and properly cleaned after each period of use with hot water and suitable soap, detergents and sterilizing agents and shall be rinsed by flushing with hot water. All trays, dishes, china, crockery, glassware, cutlery and other equipment of such type shall be cleaned by Concessionaire immediately after using the same and shall be kept clean until reused. Tables shall be cleaned and dried between serving of patrons. Floors shall be cleaned by Concessionaire of all food and beverage spilled thereon. In addition, Concessionaire shall provide and pay for regular vector control.

6.15.2 The foregoing notwithstanding, County shall assist in maintaining the sanitation required herein by providing for the collection of all refuse and payment of all charges for the removal thereon. County shall be responsible for janitorial services to the dining room only including cleaning of windows which shall be performed after business hours. The food service facilities must always have an "A" rating at all times. Failure of Concessionaire to maintain an "A" rating shall be grounds for termination of contract.

6.16 Security Devices

Concessionaire may provide any legal devices, installations, or equipment designed for the purpose of protecting the concession premises from theft, burglary or vandalism, provided written approval for installation is first obtained from the Chief Administrative Officer. All purchases and installations thereof shall be at Concessionaire's expense.

6.17 Safety

Concessionaire shall immediately correct any unsafe condition at the concession premises, as well as any unsafe practices occurring thereon. Concessionaire shall obtain emergency medical care for any member of the public who is in need thereof, because of illness or injury occurring on the concession premises. Concessionaire shall cooperate fully with County in the investigation of any accidental injury or death occurring on the concession premises, including a prompt report thereof to the Chief Administrative Officer.

6.18 Trade Fixtures

Concessionaire shall provide flatware, dishes, trays, glasses, cooking utensils, employee uniforms, cash registers and other equipment as proposed by Concessionaire for the satisfactory operation of the food service facilities. The County shall provide major cafeteria equipment. However, Concessionaire shall be responsible for the repair, replacement and maintenance of said equipment at no cost to the County. Any additional equipment shall be provided by the Concessionaire at Concessionaire's expense.

6.19 Habitation

The concession premises shall not be used for human habitation.

6.20 Prevailing Wages

To the extent that this concession involves the full-time employment by Concessionaire of dishwashers, cooks, waiters, waitresses, busboys, servers and cashiers necessary for the proper performances by Concessionaire of the obligations imposed on him by this concession agreement, Concessionaire agrees that the per diem wages paid to paid personnel shall not be less than the prevailing rate of per diem wages in the locality in which this concession is located for each classification or type of employee provided at least 50 percent of the employees in the classification in the locality are covered by a collective bargaining agreements. In the even no collective bargaining agreements exist in the locality in which this concession is located, the prevailing wage shall be determined by a survey of job positions comparable to those in the employ of the Concessionaire, which survey shall be undertaken by the Chief Administrative Officer or his designee. As used in this paragraph, the term locality shall be deemed to mean the greater Los Angeles area. As used in this paragraph, the term per diem wages shall be deemed to include employer payments for health and welfare, pension, vacation, paid holidays and similar purposes. Concessionaire shall keep an accurate record showing the per diem wage to each classification of employee personnel on the premises and said records shall be open to inspection at all reasonable hours by agents of the County. This requirement is applicable only to Concessionaire exempted from the provisions of Living Wage Ordinance as defined in Paragraph 36 of this contract.

6.21 Vacation Benefits

Concessionaire shall provide a minimum of two weeks paid vacation for each full-time employee. Full-time employees are those who work a minimum of 35 hours per week for 50 weeks.

7. MAINTENANCE AND REPAIRS

7.01 County shall be responsible for maintaining the concession premises in good condition including range hood, fire suppressant system, ducts, ceiling tiles, floor coverings, electrical, lighting, plumbing, air conditioning, ventilating, flue cleaning, grease trap and heating systems. In addition to this general requirement, County shall perform any and all repairs' required for the maintenance thereon in compliance with all laws applicable thereto. Concessionaire shall be responsible for clearing of drains inside the concession premises.

7.02 Concessionaire shall be responsible for repair and replacement of all improvements and equipment thereon damaged or destroyed by the negligent and willful acts and omissions of the employees, agents, suppliers and contractor of Concessionaire. All maintenance shall commence within 30 days of the need therefor and diligently prosecuted to completion of same, except where the state of disrepair is such that an emergency of hazard is created thereby in which event there be an immediate correction thereof. County may cure the default of Concessionaire with respect to the maintenance obligations assumed herein, and upon performance thereof shall acquire a right or

reimbursement therefrom for the actual costs of same, including, but not limited to, the cost of labor, materials and equipment furnished in the correction thereof, provided there is a prior mutual agreement between the Chief Administrative Officer and Concessionaire upon the nature and scope of the work to be performed and the costs to be incurred therein.

8. **DEMAND FOR REIMBURSEMENT**

Any demand of County for reimbursement hereunder shall be satisfied by Concessionaire through payment of the sums deposited with County as security for faithful performance, and/or pro rated monthly installment payments over the remaining term of the agreement, commencing with the month next succeeding the date of completion of the maintenance performed. Any demand of Concessionaire for reimbursement hereunder shall be satisfied by County through a credit against the monthly rental obligation of Concessionaire, commencing with the month next succeeding the date of completion of the maintenance performed and for each every other month of the remaining term of the agreement, until a total credit has been provided up to the actual costs of cure or the rental reserved over said remaining term. County and Concessionaire waive all rights to payment on their respective rights to reimbursement for the actual costs of cure of the default of the other with respect to the maintenance obligations assumed herein, except in the manner and amounts heretofore provided.

9. **UTILITIES**

County shall provide and pay for all necessary utilities with the exception of telephone service. The telephone number shall be placed in the name of the concessionaire and shall not be transferable to any other location. Concessionaire waives any and all claims against County for compensation for loss of damage caused by a defect, deficiency or impairment of any utility system, water supply system, drainage system, waste system, heating or gas system, electrical apparatus or wires serving the concession premises.

10. **CAPITAL IMPROVEMENTS**

10.01 Prior to commencement of construction, and/or remodeling of the Kenneth Hahn Hall of Administration Food Service Facility, Concessionaire shall obtain approval of all plans and specifications for any improvements to be constructed upon the demised premises from the County Building and Safety, Department of Health Services, Fire Department, Chief Administrative Officer and other regulatory agencies. No modification of said plans, specifications or improvements shall be made by Concessionaire without approval thereof by these agencies. Concessionaire agrees that County may have on the site, at any time during the construction period, an inspector who shall have the right of access to the premises and the construction work. Concessionaire further agrees that final work is subject to the approval of the Chief Administrative Officer. It is mutually agreed by all parties that all construction shall be completed and operations commenced within 120 days of approval of construction plans provided that the County has made all necessary construction as identified in Section 7 "Maintenance and Repairs" of this agreement.

10.02 The parties agree that any delay in the construction due to fire, earthquake, war, labor dispute or other events beyond the control of Concessionaire shall extend the time in which said construction must be completed by the length of time of such delay.

10.03 Concessionaire shall construct, perform complete and maintain all construction covered by this agreement in a good and workmanlike manner and with high quality material, and shall furnish all tools, equipment, labor and material necessary to perform and complete the same, and hereby expressly warrants that all said materials and workmanship will be free from defects. Initial installations with respect to electrical, gas and plumbing will be approved by appropriate County Building Inspector and provided at Concessionaire expense.

10.04 It is understood that the construction or improvements required hereto may, at the discretion of Concessionaire, be constructed in phases, each phase being separate from the other by a period of time to be mutually agreed upon the Concessionaire and the Chief Administrative Officer. However, all work shall be completed within 120 days unless construction required herein extend the contract thereof.

10.05 Concessionaire shall coordinate his work schedule with other contractors to avoid disruption and delay in completion of the projects. In addition, concessionaire shall require his architect to oversee the construction to ensure that it is in accordance with approved construction plans for the food service facility.

10.06 Concessionaire shall invest \$22,000 in signage, decorations, and other miscellaneous items and equipment necessary for the proper operation of the facility.

11. OWNERSHIP OF IMPROVEMENTS

11.01 Concessionaire shall have the rights to the ownership of the improvements installed as part of this agreement, subject to the conditions provided in Section 11.01 through 11.04.

11.02 Installation Costs

All of the foregoing improvements, decor and equipment shall be furnished, supplied, installed and constructed by Concessionaire at Concessionaire's sole cost and expense.

11.03 Ownership During Term

Federal investment tax credit applicable to concession improvements shall belong to Concessionaire. Title to all furniture, furnishings, removable fixtures and supplies shall remain in Concessionaire. Prior to the commencement of operations, and annually by January 31, thereafter, Concessionaire shall furnish to the County an inventory of all furniture, furnishings and removable fixtures that have been placed in the Concession areas.

11.04 Ownership Upon Termination

If the Concessionaire's occupancy is terminated, County will reimburse Concessionaire for the unamortized value of its existing structural and attached improvements (Improvements which cannot be removed without structural damage) based upon a 10-year straight-line depreciation, with no residual value, provided the Concessionaire has obtained all necessary approvals for their construction, and also provided the Concessionaire has reported each improvement, costs and the date upon which its depreciation began, and also provided that architectural and design costs do not exceed 10 percent (10%) of the cost of the improvements and all said costs are properly supported and made available for audit. All said costs must be direct costs paid by Concessionaire to independent contractors and suppliers for work actually performed on said premises, materials furnished or professional services rendered. Costs associated with Concessionaire's employees shall be included in the calculation of these costs, plus Concessionaire's management fee not to exceed 10 percent (10%) of direct cost. To become reimbursable, the Concessionaire shall, at its expense, provide the County with "as-built" drawings and paid invoices, showing material and labor costs involved in the construction of the approved structural improvement within 90 days of the date that the improvement was put into service. Straight line depreciation shall begin on the first day of the month in which the improvement was placed into service. The Chief Administrative Officer may require Concessionaire to remove any or all of its removable improvements. Title to all improvements to which Concessionaire is reimbursed or which have been depreciated shall thereupon vest in County.

11.05 Rental Credit

The County, at its sole option, may elect to grant Concessionaire a Rental Credit equal to Concessionaire's fully-paid cost of any given improvement, and title thereto shall vest in County upon Concessionaire's use of said Rental Credit.

11.06 Ownership Upon Expiration

Upon expiration of this agreement, ownership of all improvements and equipment constructed or installed upon the premises shall vest in County, without compensation to Concessionaire.

12. PERFORMANCE BONDS

12.01 During any period of construction hereby required or otherwise authorized, Concessionaire shall provide a performance bond in an amount of not less than 100 percent of the cost for the construction to be performed as evidenced by construction contracts for all required work, made payable to the County of Los Angeles and executed by a corporate surety authorized to conduct business as a surety in the State of California and acceptable to the Chief Administrative Office Risk Management. The condition of the bond shall be such that if Concessionaire shall complete the required construction specified herein in accordance with approved plans and specifications and received permanent certificate of occupancy for the building, then surety shall no longer be bound

thereon. Said bond shall be maintained in full force and effect by Concessionaire for a period of twelve months after said works of improvement have acceptable by the Chief Administrative Officer.

12.02 During any period of construction hereby required or otherwise authorized, concessionaire shall provide a payment bond in an amount of not less than 100 percent or the costs for the construction to be performed as evidenced by construction contracts for all required work, made payable to the County of Los Angeles and executed by a corporate surety authorized to conduct business as a surety in the State of California and acceptable to the Chief Administrative Officer. The payment bond shall insure to the benefit of all claimants as said Term is presently defined by Section 30085 of the California Civil Code, or may hereafter be amended, so as to give such claimants a right of action to recover thereon in any suit brought to foreclose the liens provided for in this Title 15 of Part 4, of Division 3 of the California Civil Code or in a separate suit brought upon the bond. The condition of the bond shall be such that if Concessionaire shall well and truly pay, or cause to be paid, all claims for labor, materials, appliances, teams, or power, or either or all, performed, furnished, or constructed in connection with said works of improvements, then surety shall no longer be bound thereon. Said bond shall be maintained in full force and effect until all claims for labor, materials, appliances, teams, or power have been paid, as evidenced by release or mechanic's liens by all claimants.

12.03 The Chief Administrative Officer may accept in lieu of the bonds heretofore described, the performance and payment bonds of corporations duly authorized to issue surety bonds by the State, naming as principal a licensed contractor employed by Concessionaire to contract works of improvement on the concession premises, provided each bond is in an amount equal to the percentage hereinabove, provided, names the County as an additional obligee, contains terms and conditions substantially similar to the requirements heretofore specified; and is satisfactory to the Chief Administrative Officer as to sufficiently and liability of sureties named thereon.

12.04 Concessionaire shall have the option to deposit with the County cash or United States Government securities in all respects satisfactory to the Chief Administrative Officer in lieu of the surety obligations herein required. Said cash or securities shall be deemed deposited with the County to secure full and satisfactory performance of the principal obligations heretofore described for which surety is required, and shall be released upon satisfactory performance thereof, as evidenced by certification of completion by the Chief Administrative Officer and release of mechanic's liens by all claimants. In lieu thereof, Concessionaire may deposit the required amount in a bank(s) whose deposits are insured under the Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) Or a saving and loan whose deposits are insured under Title 4 of the National Housing Act (12 U.S.C. 1724 et seq.), provided the financial institution(s) in which the deposit is made will secure the amount of a deposit in excess of the insurable limit by its pledge of government securities and the account is made payable to County on demand and the certificate of deposit unless Concessionaire is in default of the required construction of the works of improvement and/or payment for labor, materials, appliances, teams, or power performed, furnished or contributed to the works of improvement in which

event the principal and interest shall be payable on demand to County for expenditure on completion of the works of improvement and payment of any mechanic's claims and/or liens.

13. SECURITY DEPOSIT

13.01 Prior to the commencement of this agreement, Concessionaire shall pay to the Auditor-Controller the sum of Five Thousand Dollars and No Cents (\$5,000.00) as security deposit. In lieu thereof, Concessionaire may deposit said amount in a commercial bank or savings and loan association acceptable to the Auditor-Controller, provided that a certificate of deposit is deliverable to said Chief Administrative Officer giving County the right to withdraw any or all of said amount during the term of this agreement. Concessionaire shall be entitled to any and all interest accruing from said certificate of deposit.

13.02 Said sum shall serve as security for faithful performance of all covenants, promises and conditions assumed by Concessionaire herein, and may be applied in satisfaction or mitigation of damages arising from a breach thereof, including, but not limited to, delinquent payments, correction of maintenance deficiencies, loss of revenue due to abandonment, vacation or discontinuance of concession operations; discrimination; refunding of deposits for scheduled future events which are required to be canceled due to abandonment, vacation or discontinuance of concession operations, completion of construction and payment of mechanic's liens. Application of amounts on deposit in satisfaction an/or mitigation of damages shall be without prejudice to the exercise of any other rights provided herein or by law to remedy a breach of this agreement.

13.03 In the event any or all of said amount is applied in satisfaction and/or mitigation of damages, Concessionaire shall immediately deposit such sums as are necessary to restore the security deposit to the full amount required hereunder.

13.04 Said sum shall be returned to Concessionaire upon termination of this agreement less any amounts that may be withheld therefrom by County as heretofore provided.

14. HOLD HARMLESS AND INDEMNIFICATION

14.01 Concessionaire agrees to indemnify, defend, and save harmless the County, its agents, officers, and employees from and against any and all liability, expense, including defense costs and legal fees, and claims for damages of any nature whatsoever, arising from or connected with the use of the concession premises or the operations or services under this agreement by concessionaire or the agents, servants and employees thereof, including but not limited to, damages caused by negligence, creation or maintenance of a dangerous condition of property, breach of express or implied warranty of product, defectiveness of product, or intentional infliction of harm; nonpayment for labor, materials, appliances, teams or power, performed on, or furnished or contributed to the concession premises; infringement of a patent or copyright or disclosure of a trade secret; violation of state and federal antitrust laws; and violation of federal and state civil rights laws.

14.02 This promise of indemnity shall extend to all the covered liability, expenses, and claims notwithstanding that the act, omission, or condition giving rise thereto is proximately caused by the active or passive negligence of the County relating to the use of the concession premises, the concession operations or services, acts or omissions relating to the enforcement of this agreement, or a dangerous or defective condition of the concession premises. Concessionaire's duty to indemnify the County shall survive the expiration or other termination of this agreement.

15. INSURANCE

General Insurance Requirements: Without limiting Concessionaire's indemnification of County of during the term of this agreement, Concessionaire shall provide and maintain, and shall require all of its sub-contractors to maintain, the following programs of insurance specified in this agreement. Such insurance shall be primary to and not contributing with any other insurance or self-insurance programs maintained by County, and such coverage shall be provided and maintained at Concessionaire own expense.

1. **Evidence of Insurance:** Certificate(s) or other evidence of coverage satisfactory to County shall be delivered to the Chief Administrative Office prior to commencing services under this agreement. Such certificates or other evidence shall:

1. Specifically identify this agreement.
2. Clearly evidence all coverages required in this agreement.
3. Contain the express condition that County is to be given written notice by mail at least thirty (30) days in advance of cancellation for all policies evidenced on the certificate of insurance.
4. Include copies of the additional insured endorsement to the commercial general liability policy, adding the County of Los Angeles, its Special Districts, its officials, officers and employees as insureds for all activities arising from this agreement.
5. Identify any deductibles or self-insured retentions for County's approval. The County retains the right to require Concessionaire to reduce or eliminate such deductibles or self-insured retentions as they apply to County, or, require Concessionaire to provide a bond guaranteeing payment of all such retained losses and related costs, including, but not limited to, expenses or fees, or both, related to investigations, claims administrations, and legal defense. Such bond shall be executed by a corporate surety licensed to transact business in the State of California.

2. **Insurer Financial Ratings:** Insurance is to be provided by an insurance company acceptable to the County with an A.M. Best rating of not less than A:VII, unless otherwise approved by County.

3. **Failure to Maintain Coverage:** Failure by Concessionaire to maintain the required insurance, or to provide evidence of insurance coverage acceptable to County, shall constitute a material breach of the contract upon which County may immediately terminate or suspend this agreement. County, at its sole option, may obtain damages from

Concessionaire resulting from said breach. Alternatively, County may purchase such required insurance coverage, and without further notice to Concessionaire, County may deduct from sums due to Concessionaire any premium costs advanced by County for such insurance.

4. Notification of Incidents, Claims or Suits: Concessionaire shall report to County:

1. Any accident or incident relating to services performed under this agreement which involves injury or property damage which may result in the filing of a claim or lawsuit against Concessionaire and/or County. Such report shall be made in writing within 24 hours of occurrence.

2. Any third party claim or lawsuit filed against Concessionaire arising from or related to services performed by Concessionaire under this agreement.

3. Any injury to a Concessionaire employee which occurs on County property. This report shall be submitted on a County "Non-employee Injury Report" to the County contract manager.

4. Any loss, disappearance, destruction, misuse, or theft of any kind whatsoever of County property, monies or securities entrusted to Concessionaire under the terms of this agreement.

5. Compensation for County Costs: In the event that Concessionaire fails to comply with any of the indemnification or insurance requirements of this Agreement, and such failure to comply results in any costs to County, Concessionaire shall pay full compensation for all costs incurred by County.

6. Insurance Coverage Requirements for Sub-Concessionaires: Concessionaire shall ensure any and all sub-Concessionaires performing services under this agreement meet the insurance requirements of this Agreement by either:

- (1) Concessionaire providing evidence of insurance covering the activities of sub-Concessionaires, or
- (2) Concessionaire providing evidence submitted by sub-Concessionaires evidencing that sub-Concessionaires maintain the required insurance coverage. County retains the right to obtain copies of evidence of sub-Concessionaire insurance coverage at any time.

Insurance Coverage Requirements:

General Liability insurance (written on ISO policy form CG 00 01 or its equivalent) with limits of not less than the following:

For Concessionaires Who Will Operate at this single County Location Only, and Have No Operations at Other Non-County Locations:

General Aggregate:	\$2 million
Products/Completed Operations Aggregate:	\$1 million
Personal and Advertising Injury:	\$1 million
Each Occurrence:	\$1 million

For Concessionaires Who Will Operate at this County Location, and Also Operate at One or More Other Location (County and/or Non-County):

General Aggregate:	\$4 million
Products/Completed Operations Aggregate:	\$2 million
Personal and Advertising Injury:	\$2 million
Each Occurrence:	\$2 million

Automobile Liability insurance (written on ISO policy form CA 00 01 or its equivalent) with a limit of liability of not less than \$1 million for each accident. Such insurance shall include coverage for all "owned", "hired" and "non-owned" vehicles, or coverage for "any auto".

Workers' Compensation and Employers' Liability insurance providing Workers' Compensation benefits, as required by the Labor Code of the State of California or by any other state, and for which Concessionaire is responsible. If Concessionaire employees will be engaged in maritime employment, coverage shall provide workers compensation benefits as required by the U.S. Longshore and Harbor Workers' Compensation Act, Jones Act or any other federal law for which Concessionaire is responsible.

In all cases, the above insurance also shall include Employers' Liability coverage with limits of not less than the following:

Each Accident:	\$1 million
Disease - policy limit:	\$1 million
Disease - each employee:	\$1 million

Professional Liability: Insurance covering liability arising from any error, omission, negligent or wrongful act of the Concessionaire, its officers or employees with limits of not less than \$1 million per occurrence and \$3 million aggregate. The coverage also shall provide an extended two year reporting period commencing upon termination or cancellation of this Agreement.

Property Coverage: Such insurance shall be endorsed naming the County of Los Angeles as loss payee, provide deductibles of no greater than 5 percent (5%) of the property value, and shall include:

Personal Property: Automobiles and Mobile Equipment - Special form ("all risk") coverage for the actual cash value of County-owned or leased property.

Real Property and All Other Personal Property - Special form ("all-risk") coverage for the full replacement value of County- owned or leased property.

16. TAXES AND ASSESSMENTS

16.01 The property conveyed herein may be subject to real property taxation or assessment thereon, and in the event thereof, Concessionaire shall pay before delinquency all lawful taxes, assessments, fees or charges which at any time may be levied by the State, County, City or any other tax or assessment-levying body upon the concession premises and any improvements located thereon.

16.02 Concessionaire shall also pay all taxes, assessments, fees and charges on goods, merchandise, fixtures, appliances and equipment owned or used thereon.

17. TRANSFERS

17.01 Concessionaire shall obtain County's written consent before making a transfer of any or all of its interest in this agreement, whether by sale, assignment, sublease, or otherwise. County may reasonably withhold its consent. As a reasonable condition to County's consent to any transfer of this agreement or any part thereof, Concessionaire shall pay County 50 percent (50%) of any Transfer Premium. Transfer premium means all money, fees and other consideration (including, without limitation, the fair market value of assets, fixtures, equipment or furniture) payable or transferable by the transferee to Concessionaire in connection with the transfer of this agreement of part thereof, after deducting all money payable by Concessionaire to County.

17.02 A transfer under this section shall include a change in the beneficial ownership of Concessionaire (other than a transfer to a family trust) or more than 50 percent (50%).

17.03 Each and all of the provisions, agreements, terms and covenants and conditions herein contained to be performed by Concessionaire shall be binding upon any transferee thereof.

17.04 The concession shall not be transferable by testamentary disposition of the state laws of interstate succession, as the rights, privileges, and use conferred by this agreement shall terminate prior to the date for expiration thereof in the event of the death of Concessionaire occurring within the term herein provided. Additionally, neither this agreement nor any interest therein shall be transferable in proceedings in attachment or execution against Concessionaire, or in voluntary or involuntary proceedings in bankruptcy

or insolvency or receivership taken by or against Concessionaire, or by any process of law including proceedings under Chapter X or XI of the Bankruptcy Act.

17.05 Shareholders or partners of Concessionaire may transfer, sell, exchange, assign or divest themselves of any interest they may have therein. However, in the event any such sale, transfer, exchange, assignment or divestment is affected in such a way as to give majority control of Concessionaire to any persons, corporations, partnership or legal entity other than the majority controlling interest therein at the time of the execution of this agreement, approval thereof shall be required. Consent to any such transfer shall only be refused if the Chief Administrative officer finds that the transferee is lacking in experience or financial ability to conduct the concession.

17.06 The prohibition herein contained shall not be applicable with respect to transfers of this agreement arising from the exercise of a power of sale or judicial foreclosure pursuant to the terms and conditions of a hypothecation or mortgage previously approved by the Chief Administrative Officer.

18. NONDISCRIMINATION

18.01 Concessionaire certifies and agrees that all persons employed thereby or the affiliates, subsidiaries or holding companies thereof are and shall be treated equally without regard to or because of race, religion, ancestry, national origin or sex, and in compliance with all federal and state laws prohibiting discrimination in employment, including, but not limited to, the Federal Civil Rights Act of 1964; the Unruh Civil Rights Act; and Cartwright Act; and the State Fair Employment Practices Act.

18.02 Concessionaire certifies and agrees that subConcessionaires, bidders, and vendors thereof are and shall be selected without regard to or because of race, religion, ancestry, national origin or sex.

18.03 All employment records shall be open for inspection and reinspection at any reasonable time during the term of this agreement for the purpose of verifying the practice of nondiscrimination by Concessionaire in the areas heretofore described.

18.04 The sum of TWO THOUSAND DOLLARS AND NO CENTS (\$2,000.00) is hereby agreed upon as the amount of damages that will be sustained by the County for breach of the promises on nondiscrimination herein contained. Said amount has been set by the parties hereto in recognition of the difficulty in fixing actual damages arising from a breach thereof.

19. CANCELLATION

19.01 Upon the occurrence of any one or more of the events of default hereinafter described, each cafeteria operation shall be subject to cancellation. As a condition precedent thereto, the Chief Administrative Officer shall give Concessionaire ten days notice by registered or certified mail of the date set for cancellation thereof; the grounds therefor; and that an opportunity to be heard thereon will be afforded on or before said date, if request is made thereafter.

19.02 Upon cancellation, County shall have the right to take possession of the concession premises, including all improvements, equipment, and inventory located thereon, and use for the purpose of satisfying or mitigating all damages arising from a breach of this agreement.

19.03 Action by County to effectuate a cancellation and forfeiture of possession shall be without prejudice to the exercise of any other rights provided herein or by law to remedy a breach of this agreement.

19.04 Any trustee, beneficiary, mortgage or lender under hypothecation or mortgage previously approved by the Chief Administrative Officer shall have the right at any time during the term of this agreement, to undertake any and all actions that may be required in order to prevent a cancellation of a cafeteria operation under this agreement and a forfeiture of the concession. Accordingly, the Chief Administrative Officer shall send a copy of any intended cancellation of a cafeteria operation, under this agreement, to any of the aforementioned parties whose security would be affected thereby and upon request thereof for postponement, extend the date set therefor by such time as the Chief Administrative Officer finds reasonable in order to allow said parties to correct the grounds therefor or to provide a new concessionaire under a power of sale or foreclosure contained in the hypothecation or mortgage, who upon transfer thereto shall become responsible for the correction therefor within such time as may be allowed by the Chief Administrative Officer.

20. EVENTS OF DEFAULT

20.01 The abandonment, vacation or discontinuance of one or all operations of the concession premises for more than 48 consecutive hours.

20.02 The failure of Concessionaire to punctually pay or make the payments required hereunder when due, where the delinquency continues beyond ten days following written notice for payment thereof.

20.03 The failure of Concessionaire to operate in the manner required by this agreement, where such failure continues for more than ten days after written notice from the Chief Administrative Officer to correct the conditions therein specified.

20.04 The failure to maintain the concession premises and the improvements constructed thereon in the state of repair required hereunder, and in a clean, sanitary, safe

and satisfactory condition where such failure continues for more than 10 days after written notice from the Chief Administrative Officer to correct the condition.

20.05 The failure of Concessionaire to keep, perform, and observe all other promises, covenants, conditions and agreements set forth in this agreement, where such failure continues for more than ten days after written notice from the Chief Administrative Officer for correction thereof, provided that where fulfillment of such obligation requires activity over a period of time and Concessionaire shall have commenced to perform whatever may be required to cure the particular default within 10 days after such notice and continues such performance diligently, said time may be waived in the manner and to the extent allowed by the Chief Administrative Officer.

20.06 The filing of a voluntary petition in bankruptcy; the appointment of any receiver of Concessionaire's assets; the making of a general assignment for the benefit of creditors; a petition or answer seeking an arrangement for the reorganization of Concessionaire under any Federal Reorganization Act, including petitions or answers under Chapters X or XI of the Bankruptcy Act; the occurrence of any act which operates to deprive Concessionaire permanently of the rights, powers and privileges necessary for the proper conduct and operations of the concession; the levy of any attachment or execution which substantially interferes with attachment or execution is not vacated, dismissed, stayed or set aside within a period of 60 days.

20.07 Determination by the Chief Administrative Officer, the State Fair Employment Commission, or the Federal Equal Employment Opportunity Commission of discrimination, or having been practiced by Concessionaire in violation of State or Federal laws thereon.

20.08 No transfer of the majority controlling interest of Concessionaire to persons other than those who are in control at the time of the execution of this agreement without approval thereof by the Chief Administrative Officer.

21. DESTRUCTION OF CONCESSION PREMISES

21.01 In the event any or all of the concession premises shall be totally or partially destroyed by fire, earthquake, flood, storms, war, insurrection, riot, public disorder, casualty, County shall either restore the premises or terminate the operation of the affected concession premises.

21.02 Should County elect to restore the premises, this agreement shall continue in full force and effect except that the payments to be made by Concessionaire shall be abated or other relief afforded to the extent that the Chief Administrative Officer may determine the damage or restoration interferes with the concession, provided a claim therefor is filed with the Chief Administrative Officer within 100 days of notice of election to restore the premises. Any such claim shall be denied if the destruction of the affected concession premises is found by the Chief Administrative Officer to have been caused by the fault or neglect of Concessionaire.

21.03 Concessionaire agrees to cooperate with County in the restoration of the affected concession premises by vacating and removing therefrom all items of inventory, trade fixture, equipment and furnishings for such periods as are required for the restoration thereof. Concessionaire further agrees to cooperate in the determination of the abatement and/or other relief to be provided by furnishing all information requested related to the concession, and permitting examination and audit of all accounting records kept in connection with the conduct thereof.

21.04 The aforesaid provisions of this section shall also be applicable to a total or partial destruction of the building by the aforementioned causes, except that the relief to be provided shall be based upon the extent the Chief Administrative Officer may determine that the reduction in the public's use due to the partial or total closure thereof has affected the concession.

21.05 Concessionaire agrees to accept the remedy heretofore provided in the event of a destruction of the affected concession premises, and hereby waives any or all additional rights and remedies for relief or compensation that are presently available or may hereinafter be made available under the laws and statutes of this state.

22. CONSTRUCTION BY COUNTY AFFECTING CONCESSION PREMISES

22.01 In the event County shall construct or cause to be constructed a new facility for each of the concession, this agreement shall continue in full force and effect, except that the payment to be made by Concessionaire will be abated and/or relief afforded to the extent that the Chief Administrative Officer may determine the construction interferes with the concession, provided a claim therefor is filed with the Chief Administrative Officer within 100 days of commencement of construction.

22.02 Concessionaire agrees to cooperate with County in the event the construction affects the concession premises by vacating and removing therefrom all items of inventory, trade fixtures, equipment and furnishings for such periods as are required by the construction of the new facilities. Concessionaire further agrees to cooperate in the determination of the abatement or other relief to be provided by furnishing all information requested relative to the concession and permitting examination and audit of all accounting records kept in connection with the conduct thereof.

22.03 The aforementioned provisions of this section shall also be applicable in the event of performance of work on the cafeteria requires a partial or total closure thereof, except that the abatement or other relief to be provided shall be based upon the extent the Chief Administrative Officer may determine that the reduction in the public's use of the facility due to the partial or total closure thereof, has affected the concession.

22.04 Concessionaire agrees to accept the remedy heretofore provided in the event of construction upon the concession premises and hereby waives any or all additional rights and remedies for relief or compensation that are presently available or may be made available hereinafter under the laws and statutes of this state.

23. WAIVER

23.01 Any waiver by County of any breach of any one or more of the covenants, conditions, terms and agreements herein contained shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term or agreement herein contained, nor shall failure on the part of County to require exact, full and complete compliance with any of the covenants, conditions, terms or agreements or estopping County from enforcing the full provisions thereof.

23.02 No delay, failure or omission of County to re-enter the concession premises or to exercise any rights, power, privilege or option, arising from any default, nor any subsequent acceptance of payment then or thereafter accrued shall impair any such right, power, privilege or option, or acquiescence in such default or as a relinquishment of any right.

23.03 No notice to Concession shall be required to restore or revive "time of the essence" after the waiver by County of any default.

23.04 No option, right, power, remedy or privilege of the County shall be construed as being exhausted by the exercise thereof in one or more instances. The rights, powers, options and remedies given the County by this agreement shall be cumulative.

24. RIGHT OF ENTRY

24.01 Any officer or employee of the County may enter upon the concession premises at any and all reasonable times for the purpose of determining whether or not Concessionaire is complying with the terms and conditions thereof, or for any other purpose incidental to the rights of the County.

24.02 In the event of an abandonment, vacation or discontinuance of concession operations for a period in excess of 48 hours, Concessionaire hereby irrevocably appoints the County as an agent for continuing operation of the concession granted herein, and in connection therewith authorizes the officers and employees thereof to (1) take possession of the concession premises, including all improvements, equipment and inventory thereon; (2) remove any and all persons or property on said premises and place any such property in storage for the account of and at the expense of Concessionaire; (3) sublease or license the premises; and (4) after payment of all expenses of such subleasing or licensing apply all payment realized therefrom to the satisfaction or mitigation of all damages arising from Concessionaire's breach of this agreement. Entry by the offices and employees of the County upon the concession premises for the purpose or exercising the authority conferred hereon as agent of Concessionaire shall be without prejudice to the exercise of any other rights provided herein or by law to remedy a breach of this concession agreement.

25. SURRENDER

Upon expiration of the term hereof, or cancellation thereof as herein provided, Concessionaire shall peaceably vacate the concession premises and any and all improvements located thereon and deliver up the same to County in a reasonable good condition, ordinary wear and tear excepted.

26. TERMINATION FOR IMPROPER CONSIDERATION

26.01 The County may, by written notice to Concessionaire, immediately terminate the right of Concessionaire to proceed under this agreement if it is found that consideration, in any form, was offered or given by Concessionaire, either directly or through an intermediary, to any County officer, employee or agent with the intent of securing the agreement or securing favorable treatment with respect to the award, amendment or extension of the agreement or the making of any determination with respect to the Concessionaire's performance pursuant to the agreement. In the event of such termination, the County shall be entitled to pursue the same remedies against Concessionaire as it could pursue in the event of default by the Concessionaire.

26.02 Concessionaire shall immediately report any attempt by a County officer or employee to solicit such improper consideration. The report shall be made either to the County manager charged with the supervision of the employee or to the County Auditor-Controller's Employee Fraud Hotline at (213) 974-0914 or (800) 544-6881.

26.03 Among other items, such improper consideration may take the form of cash, discounts, service, the provision of travel or entertainment, or tangible gifts.

27. LOBBYIST ORDINANCE

Concessionaire and each County lobbyist or County lobbying firm as defined in Los Angeles County Code Section 2.160.010, retained by Concessionaire, shall fully comply with the County Lobbyist Ordinance, Los Angeles County Code Chapter 2.160. Failure on the part of Concessionaire or any County lobbyist or County lobbying firm retained by Concessionaire to fully comply with the County Lobbyist Ordinance shall constitute a material breach of this agreement upon which the County may immediately terminate or suspend this agreement.

28. REFERRAL OF CURRENT AND FORMER COUNTY EMPLOYEES FOR EMPLOYMENT WITH CONCESSIONAIRE

28.01 Concessionaire shall accept referrals from County Human Resources of qualified current and former County employees for consideration of employment with Concessionaire. Such consideration for employment shall be limited to the vacancies in Concessionaire's staff needed to perform services under this agreement. If such referrals results in offers of employment such offers shall be made once, shall be in writing, shall

indicate whether the position is full-time or part-time, and shall be valid for a period of 10 calendar days from the date the offer is made, unless such period is extended at Concessionaire's option. Such offers shall be for vacancies which occur in Concessionaire's staff, beginning with Board approval of this agreement and throughout the term of this agreement. Employment offers to such employees shall be under at least the same conditions and rates of compensation which apply to the other persons who are employed or may be employed Concessionaire. Concessionaire shall maintain records of such offers to include a description of the position and duties, the rate of pay and fringe benefits, and whether the offer was accepted, rejected, or not responded to within the allocated time period. Such employees who are employed by Concessionaire under this paragraph shall not be discharged during the term of this agreement except for cause. At the time of any such discharge for cause, Concessionaire shall in writing notify Human Resources staff or other County staff which may be designated in writing by the Chief Administrative Officer. Notwithstanding any other provision of this agreement, the parties do not in any way intend that any persons shall acquire any rights as a third party beneficiary of this agreement.

29. COUNTY'S QUALITY ASSURANCE PLAN

The Chief Administrative Officer will evaluate Concessionaire's performance under this agreement on an annual basis. Such evaluation will include assessing Concessionaire's compliance with all contract terms and performance standards. Concessionaire's deficiencies which County determines are severe or continuing and that may place performance of the agreement in jeopardy if not corrected will be reported to the Board of Supervisors. The report will include improvement/corrective action measures taken by the County and Concessionaire. If improvement does not occur consistent with the corrective action measures, the County may terminate this agreement, or impose other penalties as specified in this agreement.

30. CONCESSIONAIRE'S WARRANTY OF ADHERENCE TO COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM

30.01 Concessionaire acknowledges that the County has established a goal of ensuring that all individuals who benefit financially from the County through County contracts are in compliance with their court-ordered child, family, and espousal support obligations in order to mitigate the economic burden otherwise imposed upon the County and its taxpayers.

30.02 As required by the County's Child Support Compliance Program (County Code Chapter 2.200) and without limiting Concessionaire's duty under this agreement to comply with all applicable provisions of law, Concessionaire warrants that it is in compliance and shall, during the term of this agreement, maintain compliance with employment and wage reporting requirements as required by the Federal Social Security Act (42 USC Section 653a) and California Unemployment Insurance Code Section 1088.55, and shall implement all lawfully served Wage and Earnings Withholding Orders

or District Attorney Notices of Wage and Earnings Assignment for Child or Espousal Support, pursuant to Code of Civil Procedure Section 706.031 and Family Code Section 5246(b).

30.03 Within 30 calendar days of renewal or term extension amendment to this agreement of at least one year, Concessionaire shall submit to the County's District Attorney a completed Principal Owner Information Form (POI Form), incorporated herein by reference, along with certifications in accordance with the provisions of section 2.200.060 of the County Code, that: (1) the POI Form has been appropriately completed and provided to the DA with respect to Concessionaire's Principal Owners; (2) Concessionaire has fully complied with all applicable State and Federal reporting requirements relating to employment reporting for its employees; and (3) Concessionaire has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to maintain compliance. Such certification shall be submitted on the Child Support Compliance Program Certification (CSCPC), also incorporated herein by reference. Failure of Concessionaire to submit the CSCPC which includes certification that the POI Form has been submitted to County's DA shall represent a material breach of contract upon which County may immediately suspend or terminate this agreement.

31. TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM

Failure of Concessionaire to maintain compliance with the requirements set forth in Concessionaire's Warranty of Adherence to County's Child Support Compliance Program shall constitute a default by Concessionaire under this agreement. Without limiting the rights and remedies available to County under any other provision of this agreement, failure to cure such default within 90 calendar days of written notice by County's District Attorney shall be grounds upon which County's Board of Supervisors may terminate this agreement.

32. CONCESSIONAIRE'S ACKNOWLEDGMENT OF COUNTY'S COMMITMENT TO CHILD SUPPORT ENFORCEMENT

Concessionaire acknowledges that the County places a high priority on the enforcement of child support laws and the apprehension of child support evaders. Concessionaire understands that it is the County's policy to encourage all County concessionaires to voluntarily post County's "L.A.'s Most Wanted Delinquent Parents" poster in a prominent location at Concessionaire's place of business. The County's District Attorney will supply Concessionaire with the poster to be used.

33. INDEPENDENT CONTRACTOR

In performing the obligations hereunder, Concessionaire is engaged solely in the capacity of independent Contractor, it being expressly understood that no relationship between the contracting parties hereto other than that of independent Contractor has been or is intended to be created. This concession agreement does not constitute and the parties hereto do not intend to create thereby a partnership or a joint venture, or a relationship of master and servant or principal and agent as it is mutually understood and agreed that the relationship created thereby and the construction of rights and duties thereunder is to be determined in accordance with the laws relating to owners and occupants of real property.

34. ENFORCEMENT

34.01 The Chief Administrative Officer shall be responsible for the enforcement of this agreement on behalf of the County and shall be assisted therein by those officers and employees of the County having duties in connection with the administration thereof.

34.02 In the event the County commences legal proceedings for the enforcement of this agreement or recovery of the premises used herein, Concessionaire does hereby agree to pay any sum which may be awarded to the County by the Court for attorney's fees and costs incurred in the action brought thereon.

35. GRATUITIES

35.01 It is improper for any County officer, employee or agent to solicit consideration, in any form, from a proposer with the implication, suggestion or statement that the proposer's provision of the consideration may secure more favorable treatment for the proposer in the award of the contract or that the proposer's failure to provide such consideration may negatively affect the County's consideration of the proposer's submission. A proposer shall not offer or give, either directly or through an intermediary, consideration, in any form, to a County officer, employee or agent for the purpose of securing treatment with respect to the award of the contract.

35.02 A proposer shall immediately report any attempt by a County officer, employee or agent to solicit such improper consideration. The report shall be made either to the County manager charged with the supervision of the employee or to the County Auditor-Controller's Employee Fraud Hotline at (213) 974-0914 or (800) 544-6861. Failure to report such a solicitation may result in the proposer's submission being eliminated from consideration.

35.03 Among other items, such improper consideration may take the form of cash, discounts, service, the provision of travel or entertainment, or tangible gifts.

36.0 COMPLIANCE WITH LIVING WAGE PROGRAM

A. Living Wage Program.

This contract is subject to the provisions of the County's Ordinance entitled Living Wage Program (Program) as codified in Sections 2.201.010 through 2.201.100 of the Los Angeles County Code, a copy of which is attached as Exhibit "C" and incorporated by reference into and made part of the contract.

B. Payment of Living Wage Rates

Unless Concessionaire has demonstrated to the County's satisfaction either that Concessionaire is not an "employer" as defined under the Program (Section 2.201.020 of the County Code) or that Concessionaire qualifies for an exception to the Program (Section 2.201.090 of the County Code), Concessionaire shall pay its employees no less than the applicable hourly living wage rate, as set forth immediately below, for the employees' services provided to the County under the agreement:

1. Not less than \$9.46 per hour if, in addition to the per-hour wage, Concessionaire contributes less than \$1.14 per hour towards the provision of bona fide health care benefits for its employees and any dependents; or
2. Not less than \$8.32 per hour if, in addition to the per-hour wage, Concessionaire contributes at least \$1.14 per hour towards the provision of bona fide health care benefits for its employees and any dependents. Concessionaire will be deemed to have contributed \$1.14 per hour towards the provision of bona fide health care benefits if the benefits are provided through the County Department of Health Services Community Health Plan. If, at any time during the agreement, Concessionaire contributes less than \$1.14 per hour towards the provision of bona fide health care benefits, Concessionaire shall be required to pay its employees the higher hourly living wage rate.
3. For purposes of this section, "Concessionaire" includes any subcontractor engaged by Concessionaire to perform services for the County under the agreement. If Concessionaire uses any subcontractor to perform services for the County under the agreement, the subcontractor shall be subject to the provisions of this section. The provisions of this section shall be inserted into any such subcontract agreement and a copy of the Program shall be attached to the agreement. "Employee" means any individual who is an employee of Concessionaire under the laws of California, and who is providing full-time services to Concessionaire, some or all of which

are provided to the County under the agreement. "Full-time" means a minimum of 40 hours worked per week, or a lesser number of hours, if the lesser number is a recognized industry standard and is approved as such by the County; however, fewer than 35 hours worked per week will not, in any event, be considered full-time.

4. If Concessionaire is required to pay a living wage when the agreement commences, Concessionaire shall continue to pay a living wage for the entire term of the agreement, including any option period.
5. If Concessionaire is not required to pay a living wage when the agreement commences, Concessionaire shall have a continuing obligation to review the applicability of its "exemption status" from the living wage requirement, and Concessionaire shall immediately notify County if Concessionaire at any time either comes within the Program's definition of "employer" or if Concessionaire no longer qualifies for an exception to the program. In either event, Concessionaire shall immediately be required to commence paying the living wage and shall be obligated to pay the living wage for the remaining term of the agreement, including any option period. The County may also require, at any time during the agreement and at its sole discretion, that Concessionaire demonstrate to the County's satisfaction that Concessionaire either continues to remain outside of the Program's definition of "employer" and/or that Concessionaire continues to qualify for an exception to the Program. Unless Concessionaire satisfies this requirement within the time frame permitted by the County, Concessionaire shall immediately be required to pay the living wage for the remaining term of the agreement, including any option period.

C. Concessionaire's Submittal of Certified Monitoring Reports.

Concessionaire shall submit to the County certified monitoring reports at a frequency instructed by the County. The certified monitoring reports shall list all of Concessionaire's employees during the reporting period. The certified monitoring reports shall also verify the number of hours worked, the hourly wage rate paid, and the amount paid by Concessionaire for health benefits, if any, for each of its employees. The certified monitoring reports shall also state the name and identification number of Concessionaire's current health care benefits plan, and Concessionaire's portion of the premiums paid as well as the portion paid by each employee. All certified monitoring reports shall be submitted on forms provided by the County, or any other form approved by the County which contains the above information. The County reserves the right to request any additional information it may deem necessary. If the County requests additional information, Concessionaire shall promptly provide such information. Concessionaire, through one of its officers, shall certify under penalty of perjury that the information contained in each certified monitoring report is true and accurate.

D. County Auditing of Concessionaire Records.

Upon a minimum of twenty-four (24) hours' written notice, the County may audit, at Concessionaire's place of business, any of Concessionaire's records pertaining to the agreement, including all documents and information relating to the certified monitoring reports. Concessionaire is required to maintain all such records in California until the expiration of four years from the date of final payment under the agreement. Authorized agents of the County shall have access to all such records during normal business hours for the entire period that records are to be maintained.

E. Notifications to Employees

Concessionaire shall place County-provided living wage posters at each of Concessionaire's places of business and all locations where Concessionaire's employees are performing services for the County. Concessionaire shall also distribute County-provided notices to each of its employees at least once per year. Concessionaire shall translate the posters and handouts into Spanish and any other language spoken by a significant number of its employees and submit to County for approval before distribution and posting.

F. Enforcement and Remedies

If Concessionaire fails to comply with the requirements of this section, the County shall have the rights and remedies described in this Section in addition to any rights and remedies provided by law or equity.

1. Remedies For Submission of Late or Incomplete Certified Monitoring Reports. If Concessionaire submits a certified monitoring report to the County after the date it is due or if the report submitted does not contain all of the required information or is inaccurate or is not properly certified, any such deficiency shall constitute a breach of the agreement. In the event of any such breach, the County may, in its sole discretion, exercise any or all of the following rights/remedies:

- a. Withholding of Payment. If Concessionaire fails to submit accurate, complete, timely and properly certified monitoring reports, the County may withhold from Concessionaire any amount of money that the County might otherwise owe Concessionaire, until Concessionaire has satisfied the concerns of the County, which may include required submittal of revised certified monitoring reports or additional supporting documentation.
- b. Liquidated Damages. It is mutually understood and agreed that Concessionaire's failure to submit an accurate, complete, timely and properly certified monitoring report will result in damages being sustained by the County. It is also understood and agreed that the

nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein are the nearest and most exact measure of damages for such breach that can be fixed at this time; and that the liquidated damages are not intended as a penalty or forfeiture for Concessionaire's breach. Therefore, in the event that a certified monitoring report is deficient, including but not limited to being late, inaccurate, incomplete or uncertified, it is agreed that the County may, in its sole discretion, assess against Concessionaire liquidated damages in the amount of \$100 per monitoring report for each day until the County has been provided with a properly prepared, complete and certified monitoring report. The County may deduct any assessed liquidated damage from any money otherwise due Concessionaire. If County does not owe Concessionaire any money, Concessionaire shall pay the assessed liquidated damage to County within 10 days of receiving County's notice of the assessment.

- c. Termination. Concessionaire's continued failure to submit accurate, complete, timely and properly certified monitoring reports may constitute a material breach of the agreement. In the event of such material breach, County may, in its sole discretion, terminate the agreement.

2. Remedies for Payment of Less Than the Required Living Wage. If Concessionaire fails to pay any employee at least the applicable hourly living wage rate, such deficiency shall constitute a breach of the agreement. In the event of any such breach, the County may, in its sole discretion, exercise any or all of the following rights/remedies:

- a. Withholding Payment. If Concessionaire fails to pay one or more of its employees at least the applicable hourly living wage rate, the County may withhold from any monies otherwise due Concessionaire the aggregate difference between the living wage amounts Concessionaire was required to pay its employees for a given pay period and the amount actually paid to the employees for that pay period. The County may withhold said amount until Concessionaire has satisfied the County that any underpayment has been cured, which may include required submittal of revised certified monitoring reports or additional supporting documentation.
- b. Liquidated Damages. It is mutually understood and agreed that Concessionaire's failure to pay any of its employees at least the applicable hourly living wage rate will result in damages being sustained by the County. It is also understood and agreed that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein are the

nearest and most exact measure of damages for such breach that can be fixed at this time; and that the liquidated damages are not intended as a penalty or forfeiture for Concessionaire's breach. Therefore, it is agreed that the County may, in its sole discretion, assess against Concessionaire liquidated damages of \$50 per employee per day for each and every instance of an underpayment to an employee. The County may deduct any assessed liquidated damage from any money otherwise due Concessionaire. If County does not owe Concessionaire any money, Concessionaire shall pay the assessed liquidated damage to County within 10 days of receiving County's notice of the assessment.

- c. Termination. Concessionaire's continued failure to pay any of its employees the applicable hourly living wage rate may constitute a material breach of the Agreement. In the event of such material breach, County may, in its sole discretion, terminate the agreement.

- 3. Debarment. In the event Concessionaire breaches a requirement of this section, the County may, in its sole discretion, bar Concessionaire from the award of future County agreements for a period of time consistent with the seriousness of the breach, not to exceed three years.

G. Use of Full-Time Employees

Concessionaire shall assign and use full-time employees of Concessionaire to provide services under the agreement unless Concessionaire can demonstrate to the satisfaction of the County that it is necessary to use non-full-time employees based on staffing efficiency or County requirements for the work to be performed under the agreement. It is understood and agreed that Concessionaire shall not, under any circumstance, use non-full-time employees for services provided under the agreement unless and until the County has provided written authorization for the use of same. Concessionaire submitted with its proposal a full-time-employee staffing plan. If Concessionaire changes its full-time-employee staffing plan, Concessionaire shall immediately provide a copy of the new staffing plan to the County.

H. Concessionaire Retaliation Prohibited

Concessionaire and/or its employees shall not take any adverse action which would result in the loss of any benefit of employment, any agreement benefit, or any statutory benefit for any employee, person or entity who has reported a violation of the Program to the County or to any other public or private agency, entity or person. A violation of the provisions of this paragraph may constitute a material breach of the agreement. In the event of such material breach, County may, in its sole discretion, terminate the agreement.

I. Concessionaire Standards

During the term of the agreement, Concessionaire shall maintain business stability, integrity in employee relations and the financial ability to pay a living wage to its employees. If requested to do so by the County, Concessionaire shall demonstrate to the satisfaction of the County that Concessionaire is complying with this requirement.

J. Employee Retention Rights

Note: This paragraph applies only if the agreement involves the provision of services that were previously provided by a Concessionaire under a predecessor Proposition A agreement or a predecessor cafeteria services agreement, which predecessor agreement was terminated by the County prior to its expiration.

1. Concessionaire shall offer employment to all retention employees who are qualified for such jobs. A "retention employee" is an individual:
 - a. Who is not an exempt employee under the minimum wage and maximum hour exemptions defined in the Federal Fair Labor Standards Act; and
 - b. Who has been employed by a Concessionaire under a predecessor Proposition A agreement or a predecessor cafeteria services agreement with the County for at least six months prior to the date of this new agreement, which predecessor agreement was terminated by the County prior to its expiration; and
 - c. Who is or will be terminated from his or her employment as a result of the County entering into this new agreement.
2. Concessionaire is not required to hire a retention employee who:
 - a. Has been convicted of a crime related to the job or his or her performance; or
 - b. Fails to meet any other County requirement for employees of a Concessionaire.
3. Concessionaire shall not terminate a retention employee for the first 90 days of employment under the agreement, except for cause. Thereafter, Concessionaire may retain a retention employee on the same terms and conditions as Concessionaire's other employees.

K. Neutrality in Labor Relations

Concessionaire shall not use any consideration received under the agreement to hinder, or to further, organization of, or collective bargaining activities by or on behalf of Concessionaire's employees, except that this restriction shall not apply to any expenditure made in the course of good faith collective bargaining, or to any expenditure pursuant to obligations incurred under a bona fide collective bargaining agreement, or which would otherwise be permitted under the provisions of the National Labor Relations Act.

37. CONCESSIONAIRE DEBARMENT

37.01 On January 11, 2000, the Los Angeles County Board of Supervisors adopted an ordinance for Determinations of Contractor Non-Responsibility and Contractor Debarment (Ordinance), Los Angeles County Code Chapter 2.202, which is applicable to all County contracts except to the extent applicable State and/or Federal laws are inconsistent with the terms of the Ordinance.

- a. A responsible Concessionaire is a Concessionaire who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform the contract. It is the County's policy to conduct business only with responsible concessionaires.
- b. The Concessionaire is hereby notified that, in accordance with Chapter 2.202 of the County Code, if the county acquires information concerning the performance of the Concessionaire on this or other contracts which indicates that the Concessionaire is not responsible, the County, may, in addition to other remedies provided in the contract, debar the Concessionaire from bidding on County contracts for a specified period of time not to exceed 3 years, and terminate any or all existing contracts the Concessionaire may have with the County.
- c. The County may debar a Concessionaire if the Board of Supervisors finds, in its discretion, that the Concessionaire has done any of the following: (1) violated any term of a contract with the County, (2) committed any act or omission which negatively reflects on the Concessionaire's quality, fitness or capacity to perform a contract with the County or any other public entity, or engaged in a pattern or practice which negatively reflects on same, (3) committed an act or offense which indicates a lack of business integrity or business honesty, or (4) made or submitted a false claim against the County or any other public entity.

- d. If there is evidence that the Concessionaire may be subject to debarment, the Department will notify the Concessionaire in writing of the evidence which is the basis for the proposed debarment and will advise the Concessionaire of the scheduled date for a debarment hearing before the Contractor Hearing Board.
- e. The Contractor Hearing Board will conduct a hearing where evidence on the proposed debarment is presented. The Concessionaire and/or the Concessionaire's representative shall be given an opportunity to submit evidence at that hearing. After the hearing, the Contractor Hearing Board shall prepare a proposed decision, which shall contain a recommendation regarding whether the Concessionaire should be debarred; and, if so, the appropriate length of time of the debarment. If the Concessionaire fails to avail itself of the opportunity to submit evidence to the Contractor Hearing Board, the Concessionaire may be deemed to have waived all rights of appeal.

38. INTERPRETATION

38.01 This agreement shall be interpreted according to the rules which govern the interpretation of contracts, as prescribed in Part 2 of Division 3 of the State Civil Code, commencing with Section 163.5.

38.02 The headings herein-contained are for convenience and reference only and are not intended to define or limit the scope of any provisions hereof.

38.03 The following words as used herein shall be construed to have the following meaning, unless otherwise apparent from the context in which they are used:

County: Shall mean the County of Los Angeles

Chief Administrative Officer: The Chief Administrative Officer of the County of Los Angeles or an authorized representative thereof.

Auditor-Controller: The County Auditor-Controller or an authorized representative thereof.

Beverage: Any liquid prepared by flavoring, heating and/or admixing in advance of consumption thereof, other than alcoholic beverages as defined in the State Alcoholic Beverages Control Act.

Food service facility: A cafeteria operated for the exclusive use of County employees and the guests thereof, including those employees who furnish their own meals for consumption therein.

Concessionaire: A food service operator authorized to sell food and beverage under this contract. Also referred to as Contractor.

Gross Receipts: All money, cash, receipts, assets, property or other things of value, including, but not limited to, gross charges, sales, rental, fees and commissions made or earned by Concessionaire, and/or assignees, subleases, or permittees thereof, whether collected or accrued from business, use or occupation, or any combination thereof, transacted, performed in whole or in part, on the concession premises, including, but not limited to, rental, the rendering or supplying of services and the sale of goods, wares or merchandise. Gross receipts shall not include the following:

- a. Sales and excise taxes applicable thereto, required to be collected by Concessionaire or permittees thereof.
- b. Federal, state, municipal or other taxes collected from the consumers, regardless of whether the amount thereof as stated to the consumer as a separate charge, provided the amount of such taxes shall be shown on the accounting records for the concession as hereinafter required.
- c. Receipts from the sale or trade-in value of any equipment used on the concession premises and owned by Concessionaire.
- d. Receipts in the form of refunds from or the value of merchandise, supplies or equipment returned to the shippers, suppliers or manufacturers.
- e. Receipts with respect to any sale where the subject of such sale or some part thereof, is thereafter returned by the purchaser and accepted by Concessionaire, to the extent of any refund actually granted or adjustment actually made, either in the form of cash or credit.

Net Profit: Net profit shall be computed by deducting from gross receipts all expenses paid or incurred by Concessionaire which are directly related to the cafeteria operation for said contract year. These expenses consist of salaries and benefits for employees, including an on-site manager, performing services and labor on the premises, food costs, costs of expendable items such as eating and cooking utensils, costs of utilities, waste disposal, maintenance and repair costs, depreciation on equipment owned by Concessionaire (useful life shall be the period of this contract) and the costs of insurance, taxes, licenses and fees prorated on the basis of a contract year. Said direct expenses shall not include administrative expenses, such as management salaries, accounting, auditing, clerical and other services generally classified as overhead. In the event there is any conflict or disagreement as to what constitutes a direct expense, the opinion of the County's Auditor-Controller shall be decisive in the matter.

State - The State of California.

39. NOTICES

39.01 Any notices required to be given under the terms of this concession agreement or any law applicable thereto may be placed in a sealed envelope, with postage paid, addressed to the person on whom it is to be served, and deposited in a post office mail box, sub-post office, substation or mail chute, or other like facility regularly maintained by the United States Postal Service. The address to be used for any notice served by mail upon Concessionaire shall be:

P & A Food Systems, Inc.
501 West Dryer Road
Santa Ana, CA 92701
Attn: Judy Osuna, Director
Business Development

or such other place as any hereinafter be designed in writing to the Chief Administrative Officer by Concessionaire.

39.02 Any notice served by mail upon County shall be addressed to:

Chief Administrative Officer
County of Los Angeles
Real Estate Division
222 South Hill Street, 3rd Floor
Los Angeles, CA 90012

or such other place as may hereinafter be designated in writing to Concessionaire by the Chief Administrative Officer. Service by mail shall be deemed complete upon deposit in the above-mentioned manner.

40. ENTIRE AGREEMENT

40.01 This document and the exhibits attached hereto, constitute the entire agreement between the County and Concessionaire for the food service concession at the Kenneth Hahn Hall of Administration. All other agreement, promises and representations with respect thereto, other than contained herein, are expressly revoked, as it has been the intention of the parties to provide for a complete integration within the provisions of this document, the terms, conditions, promises and covenants relating to the concession and the premises to be used in the conduct thereof. The unenforceability, invalidity, or illegality of any provision of this agreement shall not render the other provisions thereof unenforceable, invalid or illegal.


40.02 This document may be modified only upon written agreement between the parties hereto. Any such modification shall not be effective unless and until executed by Concessionaire and in the case of County until approved by the Chief Administrative Officer.

IN WITNESS WHEREOF, Concessionaire has executed this concession agreement, or caused it to be dully executed, and the County of Los Angeles, by order of its Board of Supervisors, has caused this agreement to be executed on its behalf by the Mayor of said Board and attested by the Executive Officer, Board of Supervisors thereof, on the day and year first above written.

COUNTY OF LOS ANGELES

By _____
Mayor, County of Los Angeles

P & A FOOD SYSTEMS, INC.

By  6/28/01

By 

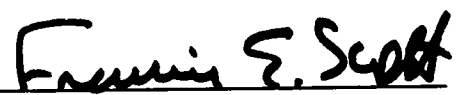
ATTEST:

VIOLET VARONA-LUKENS
Executive Officer, Board of Supervisors

By _____
Deputy

APPROVED AS TO FORM:

LLOYD W. PELLMAN
County Counsel

By 
Frank Scott, Principal Deputy
County Counsel

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

Orange

ss.

On June 28, 2001, before me, JOSEPH M. V. VO, Notary Public

personally appeared ROBERT NICHOLAS PECORARO & ANTHONY JOE PECORARO Jr

- ☐ personally known to me
☒ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) ~~is~~are subscribed to the within instrument and acknowledged to me that ~~he~~she/they executed the same in his/her/their authorized capacity(ies), and that by ~~his~~her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal Above

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document CONCESSION AGREEMENT

Title or Type of Document:

Document Date: 6/28/2001 Number of Pages: 50

Signer(s) Other Than Named Above: N/A

Capacity(ies) Claimed by Signer

Signer's Name:

- ☐ Individual
☒ Corporate Officer ← Title(s): SECRETARY & CEO
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: SELVES



156'-0"±

CAFETERIA

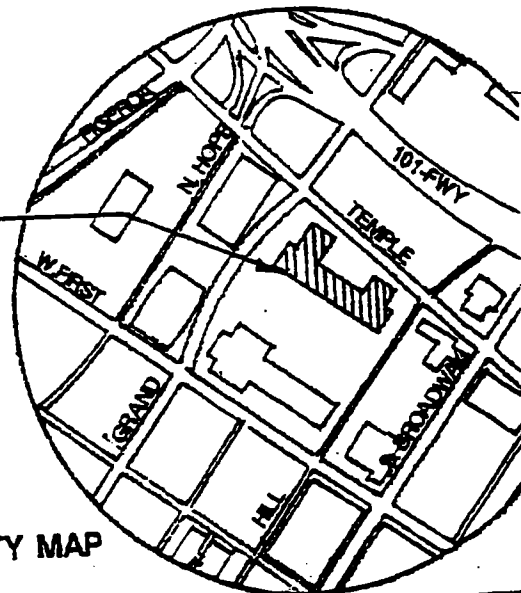
15,579 SQ. FT.

FLOOR PLAN

CAFETERIA LOCATED
IN THIS BUILDING

EXHIBIT A

VICINITY MAP



COUNTY OF LOS ANGELES — CHIEF ADMINISTRATIVE OFFICE

DATE 03/26/99	A.M.B.	SUP.DIS.	SCALE N.T.S.
THO. GD.	I. M.	RD. DIST.	BY GL

KENNETH HAHN HALL OF ADMINISTRATION

500 W. TEMPLE, LOS ANGELES.

JOB NO. 8-

Kenneth Hahn Hall

BREAKFAST

PRICE

Bagel	\$1.00
Bagel with cream cheese	\$1.25
Toast (1)	\$.50
Pancake-1 w/syrup	\$.75
English Muffin	\$.75
Raisin Bread-1 slice	\$.40
French Toast-1 slice	\$.85
Breakfast Sandwich w/Meat & cheese	\$2.25
Breakfast croissant Sandwich w/Meat & cheese	\$2.75
Egg	\$.60
Bacon or Sausage (2)	\$1.05
Hash Browns	\$.85
Biscuit	\$.90
Biscuit w/Gravy	\$1.65
Cold Cereal	\$.75
Hot Cereal 8 oz.	\$.90
Hot Cereal 12oz	\$1.25
Cheese Omelet	\$2.25
Omelets with choice of 3 Filling	\$2.95
Breakfast Burrito (Large)	\$2.95
Breakfast Burrito (Small)	\$2.25
Breakfast Quesadilla cheese only	\$2.25
Breakfast Quesadilla cheese and meat	\$2.75

SANDWICHES

PRICE

Ham, Turkey or Roast Beef Sandwich	\$3.25
Club sandwich	\$3.95
Bacon, Lettuce & Tomato	\$2.75
Egg Salad	\$2.95
Tuna or Chicken	\$3.25
Cheese	\$.30
Avocado	\$.75
Pre-Made Sandwich Platter with salad	\$4.25
Focaccia	\$3.95
California Wraps	\$3.95
Side Salad	\$.90

ENTREES

	<u>PRICE</u>
Full meal Entrée (two open key's)	\$4.50-5.25
A La Carte Entrée	\$3.75
Tossed Salad	\$4.95
Display Cooking	\$4.95
Display Cooking (half order)	\$4.25
Pizza Slice	\$1.85
Pizza Personal Pan	\$3.25
Soup 8 ounces	\$1.20
Soup 12 ounces	\$1.65
Chili 8 ounces	\$1.50
Chili 12 ounces	\$1.95
Side Veggie or Starch	\$.75
Sm.	
Lg	\$1.50.

GRILL ITEMS

	<u>PRICE</u>
Vegetarian Burger	\$2.95
Hamburger	\$2.25
Cheeseburger	\$2.55
Bacon Cheeseburger	\$3.25
Turkey Burger	\$2.25
Philly Steak Sandwich	\$3.50
Grilled Chicken Sandwich	\$3.75
Patty Melt	\$2.95
Tuna Melt	\$3.75
Hot Dog quarter pound	\$2.50
Fish Sandwich	\$3.25
Grilled ham & Cheese	\$3.75
Grilled Panini	\$3.95

SALADS

	<u>PRICE</u>
Salad Bar by the ounce	\$.29/oz.
Pre-Made Entrée Salads	\$4.50

DESSERTS AND PASTRIES**PRICE**

Muffins	\$1.35
Donuts	\$.90
Glazed Twists	\$ 1.10
Danish	\$1.40
Coffee Cake	\$1.35
Cake	\$1.35
Brownie	\$1.25
Scone	\$1.10
Pie	\$1.25
Turnover	\$1.35
Cinnamon Roll	\$1.40
Cookie (2 oz.)	\$.75
Pudding and Jello	\$.90
Cheese Cake	\$1.95
Specialty Cake	\$2.25
Yogurt	\$2.25
Frozen Yogurt by the ounce	\$.21/oz.
Haagen Daz	\$2.00
Ice Cream Novelty	\$1.75
Frito Chips	.80
Large Frito Chips	\$1.55
Whole Fresh Fruit	\$.70

BEVERAGES**PRICE**

Coffee 12 ounce	\$.75
Coffee 16 ounce	\$1.00
Coffee 24 ounce	\$1.50
STARBUCKS Coffee 12 ounce	\$1.50
STARBUCKS Coffee 16 ounce	\$1.85
Cappuccino or Latte 12 oz.	\$2.55
Cappuccino or Latte 16 oz	\$3.25
Iced Mocha 16 oz	\$2.95
Fountain Soda 12 ounce	\$.70
Fountain Soda 16 ounce	\$.90
Fountain Soda 24 ounce	\$1.25
Fountain Soda 32 ounce	\$1.50
Tea	\$.75
Tazo Tea 12 oz.	\$1.10
Tazo Tea 16 oz.	\$1.60
Hot Chocolate	\$.80
Milk	\$.80
Orange Juice ½ pint	.90
Orange Juice pints	\$1.40
Bottled Juices	\$1.25
Bottled Water ½ Liter	\$1.00
Bottle Water 1 Liter	\$1.50
Hansen	\$1.40
Bottle Frappuccino	\$2.25
Cup Juice 12 oz	\$1.60
Cup Juice 16 oz	\$2.10
Cup Juice 24 oz	\$3.00

Title 2 ADMINISTRATION

Chapter 2.201 LIVING WAGE PROGRAM

2.201.010 Findings.

The Board of Supervisors finds that the County of Los Angeles is the principal provider of social and health services within the County, especially to persons who are compelled to turn to the County for such services. Employers' failure to pay less than a living wage to their employees causes them to use such services thereby placing an additional burden on the County of Los Angeles. (Ord. 99-0048 § 1 (part), 1999.)

2.201.020 Definitions.

The general definitions contained in Chapter 2.02 shall be applicable to this chapter unless inconsistent with the following definitions:

A. "County" includes the County of Los Angeles, any County officer or body, any County department head, and any County employee authorized to enter into a Proposition A contract or a cafeteria services contract with an employer:

B. "Employee" means any individual who is an employee of an employer, under the laws of California, and who is providing full time services to an employer, some or all of which are provided to the County of Los Angeles under a Proposition A contract, or under a cafeteria services contract at a County of Los Angeles owned or leased facility.

C. "Employer" means:

1. An individual or entity who has a contract with the County:
 - a. For services which is required to be more economical or feasible under Section 44.7 of the Charter of the County of Los Angeles, and is not listed as an excluded contract in Section 2.121.250 B of the Los Angeles County Code, referred to in this chapter as Proposition A contract," or
 - b. For cafeteria services, referred to in this chapter as a "cafeteria services contract," and
 - c. Who has received or will receive an aggregate sum of \$25,000.00 or more in any 12 month period under one or more

Proposition A contracts and/or one or more cafeteria services contracts; or

2. An individual or entity that enters into a subcontract with an employer, as defined in subsection C1 and who employs employees to provide services under the employer's contract with the County.

D. "Full time" means a minimum 40 hours worked per week, or a lesser number of hours, if the lesser number is a recognized industry standard and is approved as such by the Chief Administrative Officer, but in no event less than 35 hours worked per week (Ord. 99-0048 § 1 (part), 1999.)

2.201.030 Prospective effect.

This chapter shall be applicable to Proposition A contracts and cafeteria services contracts and their amendments the terms of which commence three months or more after the effective date of this chapter.* It shall not be applicable to Proposition A contracts or cafeteria services contracts or their amendments in effect before this chapter becomes applicable. (Ord. 99-0048 § 1 (part), 1999.)

***Editor's note:** Ordinance 99-00448, which enacted ch.2.201, effective on July 22, 1999.

2.201.040 Payment of living wage.

A. Employers shall pay employees a living wage for their services provided to the County of no less than the hourly rates set under this chapter. The rates shall be \$8.32 per hour with health benefits, or \$9.46 per hour without health benefits.

B. To qualify for the living wage rate with health benefits, an employer shall pay at least \$1.14 per hour towards the provision of bona fide health care benefits for each employee and any dependents during the term of a Proposition A contract or a cafeteria services contract. Proof of the provision of such benefits must be submitted to the County for evaluation during the procurement process to qualify for the lower living wage rate in subsection A of this section. Employers who provide health care benefits to employees through the County department of health services community health plan are deemed to have qualified for the lower living wage rate in subsection A of this section.

C. The Board of Supervisors may, from time to time, adjust the amounts specified in subsections A and B of this section, above for future contracts. (Ord. 99-0048 § 1 (part), 1999.)

2.201.050 Other provisions.

- A. **Full Time Employees** - An employer shall assign and use full time

employees to provide services under a Proposition A contract or a cafeteria services contract, unless the employer can demonstrate to the County the necessity to use non-full time employees based on staffing efficiency or the County requirements of an individual job.

B. Neutrality in Labor Relations - An employer shall not use any consideration received under a Proposition A contract or a cafeteria services contract to hinder, or to further, organization of, or collective bargaining activities by or on behalf of an employer's employees, except that this restriction shall not apply to any expenditure made in the course of good faith collective bargaining, or to any expenditure pursuant to obligations incurred under a bona fide collective bargaining agreement, or which would otherwise be permitted under the provisions of the National Labor Relations Act.

C. Administration - The Chief Administrative Officer shall be responsible for the administration of this chapter. The Chief Administrative Officer may, with the advice of County Counsel, issue interpretations of the provisions of this chapter. The Chief Administrative Officer in conjunction with the Affirmative Action Compliance Officer shall issue written instructions on the implementation and on-going administration of this chapter. Such instructions may provide for the delegation of functions to other County departments.

D. Compliance Certification - An employer shall, during the term of a Proposition A contract, or a cafeteria services contract, report for each employee and certify the hour worked, wages paid, and amounts the employer paid for health benefits, and provide other information deemed relevant to the enforcement of this chapter by the County. Such reports shall be made at the times and in the manner set forth in instructions issued by the Chief Administrative Officer in conjunction with the Affirmative Action Compliance Officer. The Affirmative Action Compliance Officer, in conjunction with the Chief Administrative Officer, shall report annually to the Board of Supervisors on contractor compliance with the provisions of this chapter.

E. Contractor Standards - An employer shall demonstrate during the procurement process and for the duration of a Proposition A contract or a cafeteria services contract, a history of business stability, integrity in employee relations, and the financial ability to pay a living wage (Ord. 99-0048 § 1 (part), 1999.)

2.201.060 Employer retaliation prohibited.

No employer shall take an adverse action causing a loss of any benefit of employment, of any contract benefit, or any statutory benefit to any employee, person, or other entity, who has reported a violation of this chapter to the Board of Supervisors or to one or more of their offices, to the County Chief Administrative Officer, or to the County Auditor-Controller, or to the County department administering the Proposition A contract or cafeteria services contract. (Ord. 99-0048 § 1 (part), 1999.)

2.201.070 Employee retention rights.

In the event that any Proposition A contract or cafeteria service contract is terminated by the County prior to its expiration, any new contract with a subsequent employer for such services shall provide for the employment of the predecessor employer's employees as provided in this section.

- A. A "retention employee" is an employee of a predecessor employer:
 - 1. Who is not an exempt employee under the minimum wage and maximum hour exemptions defined in the Federal Fair Labor Standards Act;
 - 2. Who has been employed by an employer under a predecessor Proposition A contract or a predecessor cafeteria services contract for at least six months prior to the date of a new contract; and
 - 3. Who is or will be terminated from his or her employment as a result of the County entering into a new contract.
- B. Subsequent employers shall offer employment to all retention employees who are qualified for such jobs.
- C. A subsequent employer is not required to hire a retention employee who:
 - 1. Has been convicted of a crime related to the job or his or her job performance; or
 - 2. Fails to meet any other county requirement for employees of a contractor.
- D. A subsequent employer may not terminate a retention employee for the first 90 days of employment under a new contract, except for cause. Thereafter, a subsequent employer may retain a retention employee on the same terms and conditions as the subsequent employer's other employees. (Ord. 99-0048 § 1 (part), 1999.)

2.201.080 Enforcement and remedies.

For violation of any of the provisions of this chapter:

- A. An employee may bring an action in the courts of the State of California for damages caused by an employer's violation of this chapter.
- B. The County department head responsible for administering a Proposition A

contract or a cafeteria services contract may do one or more of the following in accordance with such instructions as may be issued by the Chief Administrative Officer:

1. Assess liquidated damages as provided in the contract; and/or
2. Recommend to the Board of Supervisors the termination of the contract; and/or
3. Recommend to the Board of Supervisors that an employer be barred from award of future County contracts for a period of time consistent with the seriousness of the employer's violation of this chapter, not to exceed three years. (Ord. 99-0048 § 1 (part), 1999.)

2.201.090 Exceptions.

A. Other Laws. This chapter shall not be interpreted or applied to any employer or to any employee in a manner inconsistent with United States or California laws.

B. Collective Bargaining Agreements. Any provision of this chapter shall be superseded by a collective bargaining agreement that expressly so provides.

C. This chapter shall not be applied to any employer which is a nonprofit corporation qualified under Section 501(c)(3) of the Internal Revenue Code.

D. Small Businesses. This chapter shall not be applied to any employer which is a business entity organized for profit, including but not limited to any individual, partnership, corporation, joint venture, association or cooperative, which entity:

1. Is not an affiliate or subsidiary of a business dominant in its field of operation; and
2. Has 20 or fewer employees during the contract period, including full time and part time employees; and
3. Does not have annual gross revenues in the preceding fiscal year which if added to the annual amount of the contract awarded exceed \$1,000,000.00; or
4. If the business is a technical or professional service, does not have annual gross revenues in the preceding fiscal year which if added to the annual amount of the contract awarded exceed \$2,500,000.00.

"Dominant in its field of operation" means having more than 20 employees, including full time and part time employees, and more than \$1,000,000.00 in annual gross revenues

or \$2,500,000.00 in annual gross revenues if a technical or professional service.

"Affiliate or subsidiary of business dominant in its field of operation" means a business which is at least 20 percent owned by a business dominant in its field or operation, or by partners, officers, directors, majority stockholder, or their equivalent, of a business dominant in that field of operation. (Ord. 99-0055 § 1, 1999: Ord. 99-0048 § 1 (part), 1999.)

2.201.100 Severability.

If any provision of this chapter is found invalid by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect. (Ord. 99-0048 § 1 (part), 1999.)

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